

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 15-60610



PJ CHEESE, INCORPORATED,
Petitioner Cross–Respondent,

A True Copy
Certified order issued Aug 25, 2016

versus

Lyfe W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

NATONAL LABOR RELATIONS BOARD,
Respondent Cross–Petitioner.

Petition for Review of an Order of
the National Labor Relations Board
No. 10-CA-113862

Before HIGGINBOTHAM, SMITH, and OWEN, Circuit Judges.

PER CURIAM:

PJ Cheese, Inc. (“PJ Cheese”), petitioned for review, and the National Labor Relations Board (the “Board”) cross-petitioned for enforcement, of an order of the Board reported at 362 NLRB No. 177 (Aug. 20, 2015). That order determined that PJ Cheese’s arbitration policy contained a collective action waiver that required employees to arbitrate claims arising out of their employment with PJ Cheese on an individual basis and not on a collective or class basis and that that waiver constituted an unfair labor practice under Section 8(a)(1) of the National Labor Relations Act. The Board ordered corresponding

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relief. PJ Cheese moved for summary disposition and agreed that part of the Board's cross-application should be enforced. This court granted the motion. IT IS ORDERED that the petition for review with regard to the collective action waiver is GRANTED.

The Board's order also determined that the Agreement and Receipt for Dispute Resolution Program (the "Agreement") signed by James Sullivan, as well as a related Dispute Resolution Program Booklet (the "DRP"), led employees reasonably to believe that they were prohibited from filing unfair labor practice charges with the Board, so in that regard PJ Cheese's maintenance of the Agreement constituted an unfair labor practice. IT IS ORDERED that the Board's order is ENFORCED with regard to the charge-filing prohibition.

Accordingly, it is ORDERED that to the extent it has not already done so, PJ Cheese is directed to:

1. Cease maintaining the Agreement in the form signed by James Sullivan and the corresponding DRP;
2. Rescind the Agreement or revise it and the DRP to make clear that the Agreement does not restrict the employees of PJ Cheese in their right to file charges with the Board or to have access to the Board's processes;
3. Notify all current and former employees who were required to sign the Agreement that it has been rescinded or revised and, if it has been revised, a copy of the revision.
4. Within 14 days after service by the Region, conspicuously post, for 60 consecutive days at its Birmingham, Alabama, facility, the attached notice marked "Appendix."
5. Within 21 days after service by the Region, file with the Region 10 Director a sworn certification of a responsible official, on a form provided by the Region, attesting to the steps that PJ Cheese has taken to comply with this court's order.

IT IS SO ORDERED.



Certified as a true copy and issued
as the mandate on Oct 18, 2016

Attest: *Lyfe W. Cayce*
Clerk, U.S. Court of Appeals, Fifth Circuit

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* * * * *

APPENDIX

NOTICE TO EMPLOYEES POSTED AS DIRECTED BY AN ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board (“Board”) has found that we violated federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union;

Choose representatives to bargain with us on your behalf;

Act together with other employees for your benefit and protection; and

Choose not to engage in any of these protected activities.

WE WILL NOT maintain a mandatory and binding arbitration agreement that our employees reasonably would believe bars or restricts their right to file charges with the Board or to access the Board’s processes.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind the unlawful arbitration agreement in all of its forms, or revise it in all of its forms to make clear that the unlawful arbitration agreement does not restrict your right to file charges with the Board or to access the Board’s processes.

WE WILL notify all current and former employees who were required to sign the unlawful arbitration agreement that it has been rescinded or revised and, if revised, provide them a copy of the revised agreement.

PJ CHEESE, INC.